

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

MARTÍN JONATHAN BATALLA VIDAL,
ANTONIO ALARCÓN, ELIANA FERNANDEZ,
CARLOS VARGAS, CAROLINA FUNG FENG,
M.B.F., by her next friend LUCIA FELIZ,
XIMENA ZAMORA, SONIA MOLINA
and JOHANA LARIOS SAINZ,

Case No. 1:16-cv-04756 (NGG)(JO)

September 30, 2020

On behalf of themselves and all other similarly situated individuals,

and MAKE THE ROAD NEW YORK,

On behalf of itself, its members, and its clients,

Plaintiffs,

V.

CHAD WOLF, in his official capacity as the
purported Acting Secretary of Homeland Security,
et al.,

Defendants.

PLAINTIFFS' SUPPLEMENTAL STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Any disputes identified in Defendants' Responses to Plaintiffs' Local Civil Rule 56.1 Statement, Dkt. No. 324, are immaterial, such that there are no material disputed facts before this court. However, significant events relevant to the present litigation have occurred following Plaintiffs' motion for partial summary judgment, filed on August 28, 2020. Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56.1, Plaintiffs submit the following supplemental

statement of undisputed material facts to provide an updated record of pertinent events between August 28, 2020 and September 30, 2020. Nothing in this supplemental statement of undisputed material intervening facts should be read to contradict or dispute Plaintiffs' initial statement of undisputed material facts. Dkt. No. 310-1.

1. On September 10, 2020, Defendant Wolf had served for over 300 days without nomination or confirmation to the position of Secretary of Homeland Security.
2. On September 10, 2020, Peter T. Gaynor, the Federal Emergency Management Agency ("FEMA") Administrator, purporting to exercise the functions of Acting Secretary, issued a change to the order of succession at the Department of Homeland Security ("DHS"). Dkt. No. 324-1, at *18.
3. The order stipulated an order of succession identical to the November Delegation. *Compare* Dkt. No. 324-1, at *18 (Gaynor Order) *with* Dkt. No. 314, at *8 (November Delegation).
4. The order places Defendant Wolf's confirmed office, Under Secretary of Homeland Security Office of Strategy, Policy, and Plans, above Mr. Gaynor's office, FEMA Administrator, in the order of succession. Dkt. No. 324-1, at *18.
5. Nowhere in the September 10 order did Mr. Gaynor claim to vacate his office. *Id.*
6. Instead, in the order, Mr. Gaynor purported to trigger the succession order and to dissolve his own authority to perform the duties and functions of the Secretary. *Id.*
7. On September 10, President Trump formally nominated Defendant Wolf to serve as Secretary of DHS. Dkt. No. 327-1, at *1.
8. At present, Defendant Wolf claims that he is the Acting Secretary of Homeland Security. *Leadership*, Dep't Homeland Security (last accessed Sept. 30, 2020), <https://www.dhs.gov/leadership> ("Secretary (acting), Chad F. Wolf.").

9. On Friday September 18, 2020, Defendants notified the Court and Plaintiffs that on September 17, 2020, Defendant Wolf issued a statement purporting to “affirm[] and ratify[] each of [his] delegable prior actions as Acting Secretary . . . out of an abundance of caution because of . . . [an opinion by the U.S. Government Accountability Office] and recent actions filed in federal court.” Dkt. No. 327-1, at *1.
10. The purported ratification would apply to “any and all actions involving delegable duties that [Defendant Wolf] ha[d] taken from November 13, 2019, through September 10, 2020, the date of the execution of the Gaynor Order.” Dkt. No. 327-1, at *3.
11. Defendants’ Counsel provided Plaintiffs with notice of this ratification only after filing the parties’ Joint Status Report on September 18. *Compare* Dkt. No. 325 (Joint Status Report, dated and filed on September 17, 2020) *with* Dkt. No. 327-1 (Wolf Ratification, dated September 17, 2020 and filed September 18, 2020).

Dated: September 30, 2020

Respectfully submitted,

/s/ Muneer I. Ahmad

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* Motion for law student appearance
forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2020, a true and correct copy of the foregoing Plaintiffs' Reply in Support of Their Motion for Partial Summary Judgment and Opposition to Defendants' Cross-Motion for Partial Summary Judgment was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

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